



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0471]

RIN 1625-AA00

Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet;
Brooklyn, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Gerritsen Inlet surrounding the Belt Parkway Bridge. This rule will allow the Coast Guard to prohibit all vessel traffic through the safety zone during bridge replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area.

This rule is necessary to provide for the safety of life in the safety zone during the construction of the Belt Parkway Bridge.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until September 30, 2017. For the purposes of enforcement, actual notice will be used from the date the rule was signed, April 30, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2013-0471. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-

0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker,, Coast Guard Sector New York, Waterways Management Division; telephone 718-354-4195, e-mail jeff.m.yunker@uscg.mil or Chief Craig Lapiejko, Coast Guard First District Waterways Management Branch, telephone 617-223-8351, email craig.d.lapiejko@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
NYC DOT	New York Department of Transportation

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments

received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11

inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We currently do not plan to hold a public meeting. You may, however, submit a request for one, on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

On Friday, November 29, 2013 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, "Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY" in the Federal Register (78 FR 71546). No public meetings were requested or held. No comments were received. However the initial effective and enforcement periods that were published are now delayed and shorter than those published in the NPRM. The safety zone will now be effective from April 30, 2014 to September 30, 2017. The Coast Guard will consider comments in issuing a subsequent temporary interim rule or temporary final rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. It would be impracticable and contrary to the public interest to delay

promulgating this rule, as it is necessary to protect the safety of both the construction crew and the waterway users operating in the vicinity of the bridge construction zone. A delay or cancellation of the currently ongoing bridge rehabilitation project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the bridge is expected to reopen for normal operations. The Coast Guard believes it would be impracticable and contrary to the public interest to delay this regulation. At any time, the Coast Guard may publish an amended rule if necessary to address public concerns. The Coast Guard will enforce the safety zone described in this rule to all vessel traffic during circumstances that pose an imminent threat to waterway users operating in the area. The Coast Guard will provide as much advanced notice as possible prior to enforcement. Specific closure dates and times will be posted in the Local Notice to Mariners and disseminated via a Safety Marine Information Broadcast during each closure.

C. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of this rulemaking is to ensure the safety of

vessels and workers from hazards associated with the bridge construction operations in the safety zone.

D. Discussion of Comments, Changes, and the Interim Rule

For the reasons stated above, the Captain of the Port, Sector New York, is establishing a temporary safety zone on the navigable waters of Gerritsen Inlet surrounding the Belt Parkway Bridge. The effective periods that were published in the NPRM are now delayed and shorter than those previously published in the NPRM. The safety zone will be effective from April 30, 2014 to September 30, 2017.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: vessel traffic will only be restricted from the Safety Zone for limited durations and the Safety Zone covers only a small portion of the navigable waterway.

Advanced public notifications would also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners and at <http://homeport.uscg.mil/newyork>.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within, or upstream of the safety zone during a vessel restriction period.

The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will be of limited size and most waterway

closures will be during times of reduced recreational boating traffic. The contractor has hired outreach consultants to ensure local interests are regularly notified of the project status and future impacts that can be expected. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or

vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule

and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively

have a significant effect on the human environment. This rule involves restricting vessel movement within a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination supporting this determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1226, 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0471 to read as follows:

§ 165.T01-0471 Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY.

(a) Location. The following area is a safety zone: All

navigable waters of Gerritsen Inlet: Southeast of a line from 40°35'09.46"N, 073°54'53.92"W to 40°35'10.0"N, 073°54'44.5"W and Northwest of a line from 40°35'04.88"N, 073°54'45.43"W to 40°35'10.34"N, 073°54'35.71"W (NAD 83).

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(c) Enforcement Periods. (1) This regulation is enforceable 24 hours a day from April 30, 2014 through September 30, 2017.

(2) Prior to commencing or suspending enforcement of this regulation, the COTP and designated on-scene patrol personnel will notify the public whenever the regulation is being enforced and whenever enforcement is lifted, to include

dates and times. The means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners, Marine Safety Information Bulletins, or other appropriate means.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or a COTP's designated representative.

(3) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of the vessel must proceed as directed.

Dated: April 30, 2014.

G. Loeb1,
Captain, U.S. Coast Guard,
Captain of the Port New York.

[FR Doc. 2014-10749 Filed 05/09/2014 at 8:45 am; Publication
Date: 05/12/2014]